

E34APREAs

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

13-cv-6326 (TPG)

6 PREVEZON HOLDINGS Ltd., et al.,

7 Defendants.

8  
9  
10 New York, N.Y.  
11 March 4, 2014  
12 2:25 p.m.

13 Before:

14 HON. THOMAS P. GRIESA

15 District Judge

16 APPEARANCES

17 PREET BHARARA

United States Attorney for the  
Southern District of New York

18 BY: CHRISTINE I. MAGDO, ESQ.

ANDREW C. ADAMS, ESQ.

19 Assistant United States Attorney

20 BAKER HOSTETLER

Attorneys for Defendants

21 BY: MARK A. CYMROT, ESQ.

JOHN W. MOSCOW, ESQ.

22 -and-

BAKER BOTTS LLP

Attorneys for Defendants

23 BY: SETH T. TAUBE, ESQ.

24  
25 Also Present: Gabriella Volshteyn, ESQ.  
Defendant Representative

E34APREApS

(In open court)

THE COURT: Let me start by talking about the trial date. Last time, in response to a defense request for a very prompt trial, I set a trial date of March 31. Now, in the materials that I've gone over since and so forth, the issues are not so simple and the government objects to such an early trial date. And I think the government's objection is well founded. There are issues here which have to be developed. And so I'm not, we're not going to have any trial on March 31.

Now, what other matters, if any -- I think there are some other matters, but let's start with what the counsel, what counsel want to bring up.

MS. MAGDO: Good afternoon, your Honor.

THE COURT: Please keep seated, because the microphones are not the best.

MS. MAGDO: Good afternoon, your Honor. Assistant United States Attorney Christine Magdo and Assistant United States Attorney Andrew Adams on behalf of the government.

Your Honor, the government has two pending applications before the Court, one of which your Honor has addressed. It was a motion or a request that the Court reconsider the trial date of March 31st and that it enter a discovery schedule in accordance with an adjourn trial date.

The second application that the government has pending is an application to file an amended complaint, proposed

E34APREApS

1 amended complaint. The file was attached to the government's  
2 submission of February 18, 2014. The amended complaint would  
3 significantly narrow the scope of the assets that the  
4 government seeks to forfeit. The government would then, if the  
5 Court granted the government's request to file the amended  
6 complaint, the government would then ask the Court to approve  
7 an amended protective order that would reflect the narrowing of  
8 the complaint.

9 The government believes that such an amendment is  
10 appropriate because it would streamline the case. It would  
11 focus the case. It would negate any claims that the defendant  
12 has, that the defendants have that they are suffering from a  
13 hardship to their legitimate businesses as a result of the  
14 current protective order that is in place.

15 And the government also has one issue that it wishes  
16 to raise with the Court. It's a conflict-of-interest issue.  
17 It's not an application or a motion. It's just something that  
18 the government wishes to bring to the Court's attention. It  
19 was the subject of a letter that the government submitted to  
20 the Court this morning.

21 THE COURT: Let's start with, have you gone over the  
22 proposed amended complaint and the proposed revised protective  
23 order? Have you gone over those things with defense counsel?

24 MR. ADAMS: No, your Honor. Those were submitted  
25 without discussing the specific documents with defense counsel.

E34APREApS

1 That said, the gist of the --

2 THE COURT: You haven't shown the proposed order --

3 MR. ADAMS: Oh, yes. They have a copy of the proposed  
4 amended complaint.

5 THE COURT: But you had no discussion with them?

6 MS. MAGDO: Your Honor, we had discussions about  
7 trying to find an amicable amendment to the protective order  
8 that would alleviate the defendants' concerns about  
9 interference with their legitimate business. The defendants  
10 did not wish to engage in any negotiations or discussions of  
11 that sort with the government. So based on that, we are now  
12 asking the Court for leave to file the amended complaint.

13 In their letters to the Court they have also  
14 repeatedly opposed the government's request for leave to file  
15 an amended complaint.

16 THE COURT: Can I hear from Mr. Moscow?

17 MR. MOSCOW: Your Honor, well, I was going to address  
18 it.

19 MR. CYMROT: Mark Cymrot, your Honor.

20 THE COURT: Whoever. Either one.

21 MR. CYMROT: Thank you. Your Honor, we do object.  
22 Yesterday we took a 30(b)(6) deposition of the government  
23 witness. They designated Agent Hyman. And it is clear now  
24 that --

25 THE COURT: And was his deposition productive?

E34APREApS

1 MR. CYMROT: Yes, your Honor. It was very productive  
2 because he admitted the government has no witnesses, no  
3 admissible documents, and no facts to support many of the  
4 allegations in the complaint, absolutely no facts to support  
5 allegations. As the assistant admitted last time we were here,  
6 there are no facts to support an inference that the defendants  
7 knew about that they promoted or they concealed a scheme to do  
8 a \$230 million theft on the Russian treasury. This case is  
9 about \$857,000. The tracing that was done was done not by the  
10 government subpoenaing documents, by partial bank records that  
11 were given to the government that they can't authenticate.  
12 Essentially, Judge, if you went to trial tomorrow there would  
13 be no witnesses the government could call and no documents they  
14 could submit. And the amended complaint is frankly an  
15 irresponsible pleading, as irresponsible as the original  
16 pleading.

17 We submitted the transcript to you -- I sure you  
18 haven't had time to read it -- in a letter today.

19 THE COURT: Can I interrupt you?

20 MR. CYMROT: Yes, sure.

21 THE COURT: What's the name of the witness?

22 MR. CYMROT: It was Special Agent Todd Hyman. He was  
23 designated.

24 THE COURT: Mr. Hyman.

25 MR. CYMROT: Mr. Hyman, yes. He was designated by the

E34APREApS

1 government as their witness, under Rule 30(b)(6).

2 They have no case here, your Honor. We've been saying  
3 that all along.

4 THE COURT: Wait a minute. Mr. Hyman.

5 MR. CYMROT: Yes.

6 THE COURT: Who was Mr. Hyman?

7 MR. CYMROT: He is the verifying witness on the  
8 complaint. He is the special agent who leads the purported  
9 investigation here. And we issued a notice, a 30(b)(6) notice,  
10 to say what's the basis for these allegations, and he testified  
11 for about four hours, and he acknowledged there are no  
12 competent witnesses, that they have no documents they can  
13 authenticate, that the tracing was done on incomplete bank  
14 records, that they can't authenticate, that they have no facts  
15 that would lead to an inference that the defendants knew about  
16 and promoted or concealed a scheme to engage in a theft from  
17 the Russian treasury.

18 Judge, if you read the transcript, it will shock you.

19 THE COURT: It seems to me that you're not talking  
20 about the issue.

21 MR. CYMROT: What issue? I'm sorry, your Honor. I  
22 think --

23 THE COURT: The issue is whether -- maybe I didn't  
24 understand you, but it seems to me that you're saying that the  
25 witness showed that the government had no case as far as

E34APREApS

1 participating in the original fraud on the Russian government.

2 Is that what you've just said?

3 MR. CYMROT: That's one thing, your Honor. But  
4 they --

5 THE COURT: I don't think the government --

6 MR. CYMROT: But there was no --

7 THE COURT: Excuse me. I don't think the government,  
8 to my knowledge, has ever charged that the defendants here  
9 participated in that tax fraud. Am I right?

10 MR. CYMROT: That they knew about. Each claim in the  
11 complaint alleges that they knew about the fraud, that they  
12 intended to promote or conceal the fraud. Each claim in the  
13 complaint alleges that. And last time you were questioning the  
14 government and they said, we don't know anything about the  
15 defendants' state of mind. That's one thing.

16 THE COURT: You know, we're not getting anywhere right  
17 now. In the first place, I think it was a waste of time to  
18 take -- I think it was a mistake for the government to  
19 designate that person as the witness. And I think it was a  
20 waste of time to take his deposition. And so it seems to me  
21 we've got to get this litigation on track. And the kind of  
22 discussion we're having right now is not on track. My  
23 understanding of what this case is about is the claim that the  
24 defendants participated in money laundering.

25 MR. CYMROT: Correct, your Honor.

E34APREApS

1 THE COURT: I don't understand the government to claim  
2 that the defendants participated in or engineered or conceived  
3 of or anything like that the original tax fraud on the Russian  
4 government. Can the government attorney respond? Am I right?

5 MS. MAGDO: That's correct, your Honor.

6 THE COURT: All right. Now, what the case against  
7 these defendants is that, it starts with the idea that after  
8 the \$230 million was stolen from the Russian government there  
9 was, as could be expected, efforts to launder those proceeds.

10 Now, the government does not contend, as far as I  
11 know, that it has a claim or a basis to claim that these  
12 defendants laundered all of the \$230 million, or anything other  
13 right now, except the specific claim that these defendants  
14 participated in the laundering of, what is obviously a very  
15 small part of the \$230 million, the sum of -- I never can  
16 remember -- \$875,000.

17 MR. CYMROT: 857, your Honor.

18 THE COURT: -- 857,000. And that right now is what  
19 the government is claiming. Am I right?

20 MS. MAGDO: Yes, your Honor.

21 THE COURT: And I think there's information in the  
22 record, whether it's correspondence or what, that the \$857,000  
23 came into the hands of the defendants through to shell  
24 companies from a place, is it Moldavia or Moldava or what?

25 MS. MAGDO: Moldova.



E34APREApS

1 THE COURT: Moldova. Am I right?

2 MS. MAGDO: Yes. That's one of the allegations.

3 THE COURT: And so that's what this case is about.

4 MR. CYMROT: Your Honor, each of the claims say that  
5 the defendants -- allege that the defendants knew about a  
6 specified unlawful activity, which is the \$230 million fraud.  
7 Each of the claims says that --

8 THE COURT: If you want to make a bigger claim than  
9 the government is making, that's a curious way for --

10 MR. CYMROT: Well, but that's what the amended  
11 complaint says, your Honor. And that's what the complaint  
12 says. That's what the complaint says. They allege that they  
13 had knowledge of a specified unlawful activity, which is the  
14 \$230 million fraud, that they intended to promote it or conceal  
15 it. Each of the claims says that. And what they're seeking in  
16 the complaint, and in the amended complaint --

17 THE COURT: Can I interrupt you? Does the government  
18 claim, now, that these defendants participated in any way in  
19 the \$230 million fraud on the Russian government? Has the  
20 government claimed that?

21 MS. MAGDO: The government does not have, currently  
22 have a basis for alleging that the defendants directly  
23 participated in the \$230 million theft of the Russian taxpayer  
24 money from the Russian treasury.

25 THE COURT: Can you just answer my question simply?

E34APREApS

1 MS. MAGDO: Yes, that's correct.

2 THE COURT: Does the government now claim -- look, you  
3 know as well as I do that there can be a great difference  
4 between a crime, such as selling drugs or defrauding investors,  
5 and reaping some amount of money from that crime. There can be  
6 a big difference between such a crime and participating in the  
7 laundering of the proceeds of that crime. Which are you  
8 charging here? One or both?

9 MR. ADAMS: Your Honor, principally it is, as you say,  
10 that they laundered the proceeds of a spec --

11 THE COURT: I don't want to hear about "principally."  
12 I want to hear about what we're claiming.

13 MR. ADAMS: There are both claims in the complaint.  
14 What we are, have been saying and what I believe Assistant U.S.  
15 Attorney Monteleoni said last time is that there is currently,  
16 before any discovery has been offered, no facts in our  
17 possession that show actual knowledge of the particular  
18 defendants of the \$230 million fraud. There is some  
19 circumstantial evidence that that might be true, that might be  
20 developed through discovery. But to succinctly answer your  
21 question, the complaint does allege both of those tinction.

22 MR. CYMROT: And they're seeking \$230 million or more  
23 from the defendants arising from the alleged money laundering  
24 of \$857,000. And each of the claims -- and there are seven --  
25 claim that they knew about the specified unlawful activity,

E34APREApS

1 which is the \$230 million, and they intended to promote or  
2 conceal it. And they have not walked away from that. The  
3 amended complaint says the same thing, your Honor. So we're  
4 facing the 230 million on an admission that they have no basis  
5 to make allegations about knowledge or intent. They have said  
6 it repeatedly, your Honor.

7 MR. ADAMS: Your Honor, two points. First, Ms. Magdo  
8 wanted to make a point about what's being sought.

9 THE COURT: You seem to me to want to make a big case.  
10 I want to make a case that is properly presented to a court.  
11 And in order to make a claim in a case, there has to be some  
12 basis for that claim. Pleadings can contain all kinds of  
13 things. They can often be very different from what a plaintiff  
14 ends up claiming.

15 MR. ADAMS: Your Honor, if I may --

16 THE COURT: I feel that this is a very strange  
17 procedure because the defense lawyers want to insist on the big  
18 claim.

19 MR. CYMROT: We want you to dismiss the big claim.  
20 They say it's included in the complaint. We want it dismissed.  
21 We want the whole case dismissed because there is no factual  
22 basis to make allegations. But certainly we want you to  
23 dismiss the \$230 million part of it, because they have  
24 repeatedly admitted they have no facts. It's not that they  
25 have no evidence. They have no facts. They have no basis for

E34APREAs

1 making the allegations. This was clear from the deposition  
2 yesterday.

3 THE COURT: I don't think the deposition probably  
4 solved anything.

5 MR. MOSCOW: Your Honor, if I might?

6 THE COURT: I think it was a waste of time to take  
7 that deposition.

8 MS. MAGDO: Justify to clarify, your Honor, the  
9 government, in its proposed amended complaint that it submitted  
10 to the Court on February 18th and which defense counsel has a  
11 copy, no longer seeks damages in the amount of at least \$230  
12 million. It seeks monetary damages in an amount to be  
13 determined at trial.

14 So we do not claim that, at this point, that we have a  
15 basis for saying the defendants were involved in the entire  
16 \$230 million fraud. But as your Honor points out, the  
17 defendants keep trying to set up a straw man, where they set up  
18 a case that the government is not trying to make. They say  
19 that the government does not allege the defendants to be  
20 members of the organization, the complaint does not allege that  
21 they were involved in the death of Sergei Magnitsky. The  
22 government does not need to allege that. Money laundering  
23 doesn't require that a participant know all the upstream  
24 participants or even the nature of the crime that generated the  
25 money that's being laundered. And furthermore, knowledge may

E34APREApS

1 be shown by proof of willful blindness, deliberate ignorance,  
2 or conscious avoidance. They are attempting to set up a straw  
3 man that they are able to easily knock down.

4 MR. MOSCOW: Your Honor, if I might, this amended  
5 complaint goes into the existence of an organization as  
6 defendants in this case. It goes into the existence of the  
7 arrangements. So it goes into the death of Sergei Magnitsky.  
8 And the government now says that their case has nothing to do  
9 with any of those. There is perhaps a case that they could  
10 bring if they had the evidence, which they don't, if they had  
11 witnesses, which they swore under oath yesterday they do not.  
12 And this is a designated witness selected by the government,  
13 who said, we don't have competent witnesses and we don't have  
14 any verified evidence, and we've not yet sought to get evidence  
15 from Russia.

16 These are the points that their witness made under  
17 oath, binding the United States, as I reminded him he was  
18 doing. So they want an amended complaint based on the  
19 defendants' knowing something where they have no witnesses and  
20 they say so. You can't do that. You can't accuse people in  
21 this scandalous way and have nothing. This is totally without  
22 basis. And I find it shocking, as you will when you read the  
23 transcript, that this would proceed in this way. The  
24 investigation was not conducted. They did not get the evidence,  
25 if it exists. They did not get witnesses. And my clients

E34APREApS

1 assure me that there are no such witnesses because they did not  
2 know that this crime was taking place.

3 THE COURT: What about the shell companies? What  
4 about those?

5 MR. MOSCOW: Let me address that, very clearly. About  
6 half the money that went through those companies, if the  
7 government's numbers were correct, which I have -- they have no  
8 basis for, but if they were, half the money came from the  
9 Russian treasury and half did not. Money came in to an account  
10 in Switzerland. The money which arrived was described in a  
11 bank statement, in English, which was not given to the people  
12 running the companies for months. It was a Coldmail account.

13 THE COURT: You're not answering my question.

14 MR. MOSCOW: I'm sorry. I'm attempting to. The two  
15 companies which sent the money in were acting at the request of  
16 Mr. Kim, who was sending money to Prevezon for the benefit of a  
17 Mr. Petrov. That's what the government understood the  
18 situation to be.

19 THE COURT: Why did he have to use two shell  
20 companies?

21 MR. MOSCOW: My clients are none of them. My clients  
22 were the guys who got the money --

23 THE COURT: You're not answering my question now. Why  
24 did they have to use that? Why can't they -- in other words,  
25 if you've got a legitimate investor, why the legitimate

E34APREApS

1 investor makes out a check to Prevezon?

2 MR. MOSCOW: The answer, your Honor, would be in the  
3 mind of Mr. Petrov. But in my experience in dealing with  
4 businessmen from Russia and other countries, some of them are  
5 not wholly enthusiastic about letting their holdings be known  
6 in their country. So they use secrecy jurisdictions to conceal  
7 their assets. And that is how they do business. And when you  
8 have an agreement with a Mr. Petrov and you know who he is and  
9 you know his father and you know of him and he makes an  
10 investment and the money comes in as he said it would, you do  
11 not go to the bank statement, to your banker and say, could you  
12 check to see from whom this money came, to see if they were  
13 genuine. You simply say, OK, the money arrived.

14 This is a businessman. The money was promised. It  
15 arrived. It was invested. So the guys at Prevezon did not go  
16 upstream to see where the money came from. That was not their  
17 job. Their job was to invest the money, which they did. Real  
18 estate in Europe.

19 THE COURT: The thing is, what you say may be  
20 absolutely the entire relevant facts. It may be. But there  
21 are issues. And the government contends that something  
22 different happened. And who is right, we'll either have a  
23 dispositive motion later or we'll have a trial.

24 MR. MOSCOW: Sure.

25 THE COURT: And we're not going to have a trial today.

E34APREApS

1 Now, to get this back on track, number one, there will  
2 be no trial on March 31.

3 (Pause)

4 THE COURT: We have at least said there will be no  
5 trial starting March 31. The next thing to be discussed is the  
6 proposed amended complaint. I take it that the defendants have  
7 had the proposed amended complaint for --

8 MS. MAGDO: Roughly two weeks.

9 THE COURT: What?

10 MS. MAGDO: Roughly two weeks.

11 THE COURT: All right. You have a right to file  
12 objections to that proposed amended complaint. Do you wish to  
13 do that?

14 MR. CYMROT: Yes, we do, your Honor.

15 THE COURT: Then why don't you do it.

16 MR. CYMROT: Yes, your Honor.

17 THE COURT: And then the amended complaint will either  
18 be approved or not approved. After that, if it's approved, I  
19 imagine some form of amended complaint will be approved, and  
20 then we have the issue of whether there will be an amendment to  
21 the protective order.

22 MR. MOSCOW: Your Honor, the government's request to  
23 amend protective order could be granted today. It is  
24 independent of the amendment to the complaint. The protective  
25 order could be limited today without waiting.



E34APREApS

1 MR. CYMROT: It should be limited, your Honor, to  
2 \$857,000. That's what you've repeatedly said this case is  
3 about. And we object to any protective order. We think there  
4 is no basis for it. But if you're going to have protective  
5 order, it shouldn't be beyond that.

6 THE COURT: Apparently you do not have any proposed  
7 amended or revised protective order.

8 MR. CYMROT: We have a motion pending to vacate, your  
9 Honor.

10 THE COURT: It's really not in response to what I was  
11 saying.

12 MR. CYMROT: I'm sorry.

13 MR. MOSCOW: Your Honor, we will submit by tomorrow  
14 morning a proposed amended protective order.

15 THE COURT: That will be very good.

16 So then before the Court will be the proposed amended  
17 complaint, proposed by the government, and a proposed amended  
18 protective order, proposed by the defense. And each side can  
19 respond.

20 Now, let's come to the issue of discovery. What  
21 discovery does the government plan to engage in?

22 MR. ADAMS: Your Honor, we have already served our  
23 document requests on the defendants. We are also anticipating  
24 the need to engage a few expert witnesses and translators of  
25 voluminous Russian documents. We are in the process with the

E34APREApS

1 Office of International Affairs of the Department of Justice in  
2 preparing a number of mutual legal assistance treaty requests.

3 THE COURT: To prepare what?

4 MR. ADAMS: Some MLAT requests, your Honor, some  
5 mutual assistance treaty requests to a number of different  
6 countries, including Russia, Moldova, and Dubai. And we are  
7 expected to have those approved finally by --

8 THE COURT: An not clear. What is it you're  
9 requesting approval of?

10 MR. ADAMS: It's a mechanism for document discovery in  
11 other countries. It requires the approval of the Department of  
12 Justice in Washington. And they have the final say on this  
13 request. They have them currently. And we're hoping to get  
14 those out the door shortly. And they will be delivered on the  
15 central authority for the three countries I mentioned. And  
16 then we get responses back within a number of months usually.  
17 My understanding, from Russia, is that when things are working  
18 smoothly and diplomatic relations are not as frayed as they  
19 might be currently, six months is the typical turnaround.

20 MR. CYMROT: I pose the possibility that things aren't  
21 working smoothly.

22 MR. ADAMS: I would agree with that.

23 MR. CYMROT: And we question, your Honor, why this  
24 wasn't done four months or even before their investigation.  
25 Because they brought this case without documents and without

E34APREApS

1 witnesses. And now they're saying it will take six months or  
2 more to get documents or witnesses. It's just irresponsible,  
3 your Honor. It's been irresponsible from day one.

4 MR. MOSCOW: The request to Russia may take very long.  
5 The request to Moldova, I don't know. The request to Dubai, if  
6 they're seeking records that are discussed there, are  
7 irrelevant to our clients. I think that this is an attempt to  
8 stall the case.

9 The government is lacking what it needed to bring the  
10 complaint. And when they say that they are -- I have not seen  
11 what they told the Dutch court. And I would ask you to, rather  
12 than have it turned over to us, I would ask you to ask the  
13 government to make available to you what the Department of  
14 Justice told the Dutch authorities to get them to freeze the  
15 assets there, as opposed to what they told you. I'm going to  
16 ask you to look at that.

17 This case is lacking in the minimum necessary to bring  
18 a case. They have money coming from Moldova, of which half, by  
19 their version, is from the treasury and half is not. We say we  
20 know nothing about the treasury and we expected to get it from  
21 Petrov. They say, we know nothing about your intentions, we  
22 know nothing about your knowledge, so we will freeze your  
23 properties in the United States and worldwide, and make you  
24 come into the United States to defend an expensive lawsuit  
25 because we don't have any evidence of your intent or your

E34APREApS

1 knowledge, but you do have property here, so we can move  
2 against it.

3 That's not what the law provides for. That's not what  
4 Rule G provides for in the in rem. That's not what the rules  
5 on sanctions provide for. You can't bring a case on nothing.  
6 And when they produce a 30(b)(6) witness to speak for the  
7 United States and he says, no, we have no competent witnesses,  
8 no, we do not have any authentic records, then you can  
9 understand my client's frustration at having to defend this  
10 lawsuit. This really calls out for separate action.

11 And we will be submitting a proposed order, as I said  
12 we would. We will be responding to their proposed amended  
13 complaint. But read the complaint as though it was addressed  
14 to you and say, jeez, it talks about an organization, it talks  
15 about organized crime, it talks about associates, it talks  
16 about the death of Magnitsky and acts of Congress, and none of  
17 it has anything to do with you; what you did was, you got some  
18 money in an account in Switzerland when you were living in  
19 Russia, and because of that we're going to accuse you of all  
20 ambitious things -- which, by the way, ruin your bankability  
21 everywhere in the world. That's harsh. It is savage. And  
22 it's undirected. That's just not right. And it shouldn't be  
23 put up with.

24 So we will go forward, because I understand Court has  
25 procedures and everything has to be analyzed. But I believe

E34APREApS

1 you'll be shocked when you read the deposition. It is not a  
2 waste of time. These are binding admissions on the United  
3 States. This was not the agents of the verifier. This was a  
4 deposition directed to the United States. And the United  
5 States made admissions which, frankly, were shocking.

6 MR. CYMROT: And, your Honor, the amended complaint  
7 contains all those same allegations. It names the allegations  
8 about the \$230 million fraud, about the death of Magnitsky,  
9 about the statute. They say all they want. They're not  
10 accusing our clients of being involved in that. But what's it  
11 doing in the complaint then? And how is a businessman, a  
12 banker anywhere in the world supposed to read that other than  
13 the other than the United States associating our clients with  
14 those events? And even they have admitted twice in writing to  
15 your Honor that our clients have nothing to do with the death  
16 of Magnitsky. It is still in the amended complaint. How is  
17 anybody in the world supposed to read that except the United  
18 States is accusing them of participating in that? It is  
19 outrageous and irresponsible, and if you read that transcript  
20 from yesterday, you will be shocked, I guarantee you.

21 THE COURT: Look, we sort of go around in circles. We  
22 have a hearing. We have very strenuous protests from the  
23 defense side that they had nothing to do with money laundering  
24 and all that happened was a legitimate investment. And those  
25 protests are made with great fervency by the counsel, and

E34APREApS

1 requests for a quick trial. The government does not respond in  
2 kind. The government doesn't stand up here in court and argue  
3 its case, because this is not the way things are generally  
4 done. I imagine if the government could tell of what  
5 investigation it made, of what it did within the U.S.  
6 Attorney's Office or with other agencies to prepare for the  
7 filing of this case, we would hear a lot of interesting things.  
8 But that isn't the way it's done here.

9 Now, we have motions that can be made. The government  
10 has -- I'm not sure it was a formal motion, it doesn't make any  
11 difference -- the government has proposed an amended complaint.  
12 The Court hasn't approved that. And the defendants have a  
13 right to object to that, which you can do. We've talked about  
14 that.

15 There is a protective order. The defense can move to  
16 vacate or amend the protective order, which you will do. We've  
17 talked about that. And the lawyers for the defense know, as  
18 well as I know, there are motions available under the federal  
19 rules, including a motion for summary judgment. But we're not  
20 going to really continue having the merits of the case argued  
21 informally in court. We're going to start being more formal  
22 and we will expect, if someone wants to make a motion, they  
23 will make a motion. And then the other side can respond, in an  
24 orderly way.

25 On the issue of discovery, it doesn't help at all for

E34APREApS

1 the defense lawyers to say, the government should have done it  
2 a long time ago. That doesn't get anywhere. When should the  
3 government conduct investigation and so forth? The Court  
4 doesn't really get into that. The Court deals with what's on  
5 the record. You have an opportunity to address that. If the  
6 government serves requests for documents, the defense has an  
7 opportunity to object to that. This is all in the rules. If  
8 the government engages in any other form of discovery and the  
9 defense objects to it, those objections can be made under the  
10 rules.

11 So I think this is all we can do this afternoon.

12 MR. CYMROT: Your Honor, can I make a request?

13 THE COURT: Yes.

14 MR. CYMROT: That you set a time when they will report  
15 on the MLATs.

16 THE COURT: A time that they will what?

17 MR. CYMROT: Report on the status of the MLATs, that  
18 you will set a discovery cutoff of a reasonable amount of time,  
19 and that we'll set a trial quickly. Because we are now already  
20 six or seven months into this case and they haven't done  
21 anything. And I think, your Honor, I sympathize with your  
22 statement that you've assumed there was a lot going on behind  
23 the scenes where the government can't talk about it. But the  
24 deposition yesterday said they haven't done anything. They  
25 accepted information from a source. And that's it. And they

E34APREApS

1 identified the source. And they haven't checked on the  
2 adequacy or accuracy of the information. And we have no  
3 discovery we can take. There are no witnesses here for Russia  
4 who can talk about this fraud. There are no witnesses from  
5 these banks. They don't have authentic bank records. What can  
6 we do? We want an early trial because there is no discovery we  
7 can take of a fraud that occurred in Russia. There is no  
8 discovery you can take of banks in Russia. And they haven't  
9 done it and they should have done it. And you're presuming  
10 that they acted responsibly. And I am telling you, you'll be  
11 shocked when you hear what they've done. You will be shocked.

12 THE COURT: You have an opportunity to make a motion.

13 MR. CYMROT: We will, your Honor.

14 THE COURT: And the advantage of making a motion is  
15 the government can -- that will be an orderly -- if you file an  
16 appropriate motion, you're filing an appropriate motion and the  
17 government will have the opportunity to respond. And this is  
18 all much superior to the kind of discussion we get here of  
19 accusations and so forth. I can't deal with that.

20 MR. CYMROT: I understand, your Honor. We will file  
21 the motion.

22 THE COURT: As long as we're taking the time, what is  
23 the problem about the alleged conflict of interest?

24 MR. CYMROT: Your Honor, several years --

25 THE COURT: The government has sent a letter. What's



E34APREAs

1 the issue there?

2 MS. MAGDO: Your Honor, the government wishes to bring  
3 to the Court's attention a prior-client conflict that's based  
4 on the prior representation of Hermitage by Baker Hostetler and  
5 specifically by Mr. Moscow. As your Honor may recall,  
6 Hermitage was the company whose subsidiaries had their  
7 corporate identities stolen. And that was the beginning of the  
8 \$230 million Russian tax fraud.

9 Hermitage and its founder and chief executive officer,  
10 William Browder, engaged Baker Hostetler in late 2008 and early  
11 2009 in connection with the very same subject, it is the  
12 government's understanding based on what it knows, as the  
13 matter currently before the Court.

14 The government believes that --

15 THE COURT: Wait a minute. Baker Hos -- what is it?  
16 The firm name is what?

17 MS. MAGDO: Baker Hostetler.

18 THE COURT: Baker Hostetler. They, that firm was  
19 retained by Hermitage when?

20 MS. MAGDO: In late 2008 and early 2009.

21 THE COURT: And do you know for what purpose?

22 MS. MAGDO: It's the government's understanding from  
23 speaking with representatives of Hermitage that Baker Hostetler  
24 was engaged to defend against the ongoing fraud in Russia and  
25 the false allegations that were being made against

E34APREApS

1 Mr. Magnitsky, who was an attorney working for Hermitage and  
2 against Hermitage itself in Russia. And one of the tasks that  
3 Hermitage asked Baker Hostetler to undertake was to attempt to  
4 unravel the flow of money from the Russian fraud scheme to  
5 trace the money, to try to figure out who the beneficiaries  
6 were worldwide. And Baker Hostetler did in fact assist them  
7 with that. Apparently they came up with the strategy of  
8 issuing subpoenas and tracing the money, a strategy that led to  
9 Hermitage obtaining some of the very same documents as the  
10 government is currently using as a basis for its complaint.

11 THE COURT: Baker & Hostetler will be the attorney on  
12 this?

13 MS. MAGDO: Yes. That's government's understanding.  
14 Again, the government is not taking a position on it.  
15 It just believes that it has an obligation to bring this matter  
16 to the Court's attention and that the Court has the authority  
17 to investigate and to issue a ruling on what it finds with  
18 respect to this matter.

19 MR. ADAMS: The government, at what became very clear  
20 at yesterday's, the first half of a deposition that was held  
21 yesterday --

22 THE COURT: Who is speaking now?

23 MR. ADAMS: It's Andrew Adams, your Honor. William  
24 Browder and the principals at Hermitage will be key witnesses  
25 in this case. In particular, worrying about the possibility of

E34APREAs

1 a short time frame for depositions and trial, we put it in our  
2 letter because we felt that this issue was now coming to a  
3 head. But as Ms. Magdo said, our interest is in raising it in  
4 order to make for a smooth process. But we're not taking a  
5 position as to whether there is in fact a conflict.

6 THE COURT: Mr. Moscow?

7 MR. CYMROT: I'll respond, your Honor. It's  
8 Mr. Cymrot. Your Honor, we were retained in 2008 for a very  
9 limited purpose of doing a 1782 subpoena request, which we  
10 ended up not doing. And that related to a company called  
11 Renaissance. We were retained by Hermitage to get information  
12 about a prior tax fraud related to a company called  
13 Renaissance.

14 We only acted in that respect for a very short time.  
15 For various reasons I won't get into right now, at the time  
16 that we were approached to take on this representation, we  
17 carefully reviewed whether there was a conflict.

18 THE COURT: The prior representation.

19 MR. CYMROT: The current representation. When we were  
20 approached by Prevezon, we carefully reviewed whether we had a  
21 conflict. And we came to the conclusion that we didn't have a  
22 conflict. And we maintain that right now, that we have no  
23 conflict. Hermitage has filed a bar complaint with the  
24 Appellate Division of the New York State Supreme Court and I'm  
25 told, by reading in the newspaper, with the Southern District

E34APREApS

1 of New York, but we haven't been served with anything by the  
2 Southern District.

3 THE COURT: Repeat that last. Who filed a complaint  
4 with the state bar?

5 MR. CYMROT: One with the Appellate Division of the  
6 New York Supreme Court. We are told, although we haven't seen  
7 it, that Hermitage submitted it to the Southern District of New  
8 York here, to a disciplinary committee. We haven't been served  
9 with anything by the Southern District.

10 THE COURT: Hermitage has filed something with the  
11 state court?

12 MR. CYMROT: Yes. And we're responding to that.

13 THE COURT: Complaining of what?

14 MR. CYMROT: Complaining -- they are claiming -- well,  
15 the complaint has shifted over time, your Honor. They are now  
16 saying that we, Mr. Moscow and our firm, are involved in  
17 tracing the funds from the Russian treasury. That's simply not  
18 true. And we have investigated our files. That was not our  
19 retention and we didn't do it. So this is something, if your  
20 Honor wants to hear it, I think we should have something other  
21 than a government letter. We need a motion of some sort.  
22 Because it's not before your Honor now. And I want to know  
23 what their basis for saying what the government just said is,  
24 because it is inaccurate in many ways, particularly the scope  
25 of our representation, which was very limited, to getting

E34APREAs

1 subpoenas relating to Renaissance.

2 THE COURT: What is Hermitage?

3 MR. CYMROT: Hermitage owned funds, hedge funds or  
4 private equity funds, in Russia. At one point it was the  
5 largest hedge fund in Russia.

6 THE COURT: I'll tell you, I'll tell you, the  
7 government is not requesting the Court to do anything, and it  
8 would be completely inappropriate for me to take any action or  
9 voice any vow. And I will not do it at this time.

10 The issue in this case is whether Baker Hostetler can  
11 properly represent its client in this case, Prevezon. Thus  
12 far, that firm has vigorously and skillfully done such  
13 representing. That's what I know, from observation. And it is  
14 inconceivable that I would -- and nobody is even suggesting  
15 this, but it's inconceivable that I would give any  
16 consideration to what Heritage, or Hermitage, whatever the --  
17 Hermitage?

18 MR. CYMROT: Hermitage.

19 THE COURT: -- might be filing in the state court.  
20 And so right now, as far as I'm concerned, Baker Hostetler is  
21 properly representing its clients in this case, and that's the  
22 way we'll leave it. If there's some other development that  
23 changes things, well, that's something that I do not know  
24 anything about right now.

25 The way I think we've left it, there can be motions on

E34APREApS

1 the subject I've talked about, and let's leave it for the day.

2 Thank you.

3 MR. ADAMS: Thank you, your Honor.

4 MS. MAGDO: Thank you, your Honor.

5 MR. CYMROT: Thank you, your Honor.

6 o0o